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Nos. 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

Office Supreme Court
FILED
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JAMES H. McKINN

JAMES G. TINSLEY, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

WM. DEC. KESSLER, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

SAMUEL T. MORGAN, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

AUSTIN B. CARPENTER, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

FORTESQUE WHITTLE, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

FRANK E. WILCOX, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

GEORGE BRADEN, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

FRANK S. ROYSTER, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

J. RICE SMITH, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

CHARLES F. BURROUGHS, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

CHARLES H. McDOWELL, APPELLANT,
vs.
MORGAN TREAT, UNITED STATES MARSHAL, ET AL.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

October Term, 1906.

James G. Tinsley, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 369.
Wm. DeC. Kessler, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 370.
Samuel T. Morgan, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 371.
Austin B. Carpenter, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 372.
Fortesque Whittle, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 373.
Frank E. Wilcox, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 374.
George Braden, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 375.
Frank S. Royster, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 376.
J. Rice Smith, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 377.
Charles F. Burroughs, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 378.
Charles H. McDowell, Appellant, *vs.* Morgan Treat, United States Marshal, et al.	No. 379.

10466—06

MOTION TO ADVANCE.

These are appeals in habeas-corpus proceedings instituted to prevent the removal of appellants from one district to another for trial upon an indictment brought under the Antitrust Act of July 2, 1890.

Indictments were found charging the appellants with engaging in a conspiracy in restraint of trade, in violation of section 1 of the Antitrust Act, also for conspiring to commit an offense, to wit, the offense of engaging in a combination in restraint of trade against the United States in violation of section 5440 of the Revised Statutes. The combination was popularly known as the "Fertilizer Trust," and it sought to control the prices of fertilizers in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Tennessee.

The cases are similar, and it will be sufficient for the purposes of this motion to state the facts in one. In case No. 369 the appellant, James G. Tinsley, was indicted May 25, 1906, with many other persons and corporations, at Nashville, Tenn., for a violation of the Antitrust Act. Upon the complaint of the appellee, Treat, and a certified copy of the indictment found, a warrant was issued to arrest the defendant by the district judge for the Eastern District of Virginia. He was thereupon brought before Hon. Edmund Waddill, jr., United States district judge, under section

1014 of the Revised Statutes, for removal to the Middle District of Tennessee for trial. Inasmuch as the indictment charged an offense committed against the United States triable in the Middle District of Tennessee, and inasmuch as the identity of the defendant was admitted, the Government moved for an order of commitment for trial before that court. Thereupon the defendant offered to prove by himself and others that the Circuit Court for the Middle District of Tennessee had no jurisdiction over his person touching the offense charged; that he had been a resident of Virginia for many years and never in Tennessee did he perform nor was he a party to or engaged in any act or thing charged in the indictment, nor had he at any time or place done any of the things charged.

The court held that upon an application for arrest and removal in Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to a trial on the merits, it was the duty of the court upon the presentation of a sufficient indictment and proof of identity to cause the removal of the defendant for trial or admit him to bail. The testimony for the defendant was accordingly rejected and he was ordered to give bail to appear before the Circuit Court for the Middle District of Tennessee or in default to be committed to jail. The defendant declined to give bail and sued out a writ of habeas corpus, which writ, after hearing, was

discharged. An appeal was allowed to this court and he was enlarged on bail.

The appellant claims under clause 3, section 2, article 3 of the Constitution and the sixth amendment that he is entitled to be tried and can only be indicted and tried for any alleged offense against the United States in the State and district where the offense was committed; that the alleged offense was not committed in the middle district of Tennessee and that no act alleged was done by the defendant in that district. He further claims that the indictment does not charge any offense against the United States; that his imprisonment is without authority of law and the proceedings for removal illegal and in violation of his constitutional rights; that the exclusion of the evidence offered and the holding that the certified copy of the indictment was conclusive deprived the petitioner of rights secured to him by the Constitution and section 1014 of the Revised Statutes, and that he is deprived of his liberty without due process of law.

Some thirty corporations, of different States, and about twenty-five individual persons, residents and citizens of different States, have been jointly indicted at Nashville. The removal of the non-resident defendants and the trial of the suit have necessarily been deferred awaiting the decision of these cases.

As the appellants are at large on bail and, in order to enable the Government to proceed with the prosecutions, the Solicitor-General respectfully

moves the court to advance the cases on the docket and to set them down for hearing on some day convenient to the court during the present term.

Opposing counsel concur in this motion, only asking that the cases be set far enough off to give ample time for preparation.

HENRY M. HOYT,
Solicitor-General.

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